The prescription for O 42 r 12 is to be found in s 80(2)(j) of the Supreme Court of Judicature Act (Cap 322, 1985 Ed) which by the words *'unless it has been otherwise agreed between the parties'* in the proviso is careful not to curtail contractual rights.

Lastly, it was urged on me by the defendants' counsel that to permit the plaintiffs' claim for post-judgment interest would transgress s 9 of the Civil Law Act (Cap 43, 1988 Ed) as that would amount to giving the plaintiffs interest upon interest. I do not agree. The short answer to this is that it is permissable if the capitalizing of interest or the charging of compound interest is contractually provided for. Clause 11.4 of the loan agreement clearly so provides. See *National Bank of Greece SA* v *Pinios Shipping Co No 1 & Anor, The Maira.*[8]

Accordingly, the plaintiffs' cross-appeal succeeds. The order of the senior assistant registrar dated 28 March 1990 and the judgment entered pursuant thereto on 31 March 1990 will be varied to the extent that the sum of SwF 1,744,878.22 will carry interest at the rate of 4½% above the rate as determined by the plaintiffs for a deposit of an amount comparable to the said sum offered to the plaintiffs in the Singapore Interbank Market with half-yearly rests from 28 March 1990 until payment.

The costs of the defendants' appeal will be taxed on a solicitor and client basis and paid to the plaintiffs. There will be no order, as agreed between the parties, on the plaintiffs' cross-appeal.

Defendants' appeal dismissed; plaintiffs' cross-appeal allowed.

Solicitors: *Godwin & Co; Haridass Ho & Partners.*

Reported by *Liu Hern Kuan*

Peh Diana & Anor v Tan Miang Lee

HIGH COURT (SINGAPORE) — SUIT NO 1486 OF 1988
CHAO HICK TIN J
3 JANUARY 1991

Damages (Personal Injury or Death) — Head injury — Brain damage — Intellectual impairment, personality change, facial disfigurement — Damages for pain and suffering, loss of amenities, loss of future support and loss of future earnings — Determination of multiplicand — Use of national average wage

This is an appeal by the defendant against the assessment of the senior assistant registrar with regard to damages for pain and suffering, loss of future earnings and future cost of maid. On 20 February 1988, the first plaintiff (an infant) was travelling as a passenger in motor taxi No SHA 3558M driven by the defendant along the central carriageway of Nicoll Highway in the direction of Guillemard Road, when the said motor taxi went over the road divider onto the wrong side of the said highway and collided with an on-coming motor taxi No SH 7799R. The defendant conceded liability and an interlocutory judgment was entered against him with damages to be assessed. Following a hearing on damages before a senior assistant registrar, it was ordered, inter alia, that the defendant should pay to the first plaintiff a total sum of $691,699.85 as damages, together with interest accruing on $181,163.85 at the rate of 6% pa from the date of the writ, up to the date of the order.

Held, allowing the appeal in part:

(1) A judge's decision on quantum of damages should not be disturbed unless (i) the judge has applied a wrong principle of law or (ii) the amount awarded is either so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.

(2) Considering the precedents, the appropriate compensation payable to the first plaintiff for the head injury and the consequential disabilities that resulted therefrom, and taking into account inflation, should not exceed $70,000.

(3) There is great difficulty in accepting that in the case of a person who has never worked, the national average wage should be used for purposes of working out his loss of future earnings. The amount to be taken in computing loss of future earnings must be that of a young worker and not someone who had worked for some years. In considering loss of future income, the court must have regard to whether the plaintiff would overcome the psychological problems.

(4) On the evidence, it would be wrong to award the first plaintiff a sum as if she would forever be in need of a full-time maid. She did not need a full-time maid even at the time of trial. Therefore, damages would be awarded to obtain a local help just to keep an eye on her and such help should continue for a period of of five years.

[*Editorial Note*: The plaintiffs have appealed to the Court of Appeal vide Civil Appeal No 6 of 1991.]

Cases referred to

1 *Greenfield* v *London and North Eastern Railway Co* [1945] KB 89 (folld)
2 *Nance* v *British Columbia Electric Railway Co Ltd* [1951] AC 601; [1951] 2 All ER 448 (folld)
3 *Tan Joon Heng* v *Thiam Boon Kiap & Anor* [1989] BLD Yearbook 681; BLD [Feb] 209 (distd)

4 *Lai Chi Kay & Ors* v *Lee Kuo Shin* [1981] 2 MLJ 167 (refd)
5 *Teo Tio Khiang & Anor* v *Ooi Eng Teong* [1987] 1 MLJ 198 (distd)
6 *Tominam bte Tukimin* v *Toh Kai Chup* [1985] 2 MLJ 345 (refd)
7 *Lai Wee Lian* v *SBS (1978) Ltd* [1984] 1 MLJ 325 (refd)
8 *Jamil bin Harun* v *Yang Kamsiah & Anor* [1984] 1 MLJ 217 (refd)
9 *Chiang Chang Sein & Anor* v *Estate of Leow Poh Hua* 1990 BLD [Jun] 551 (refd)
10 *Chan Kam Lan* v *Ong Lean Kee* [1979] 1 MLJ xxxviii (refd)
11 *Mohamed Fami Hassan* v *Swissco Pte Ltd & Anor* [1986] 1 MLJ 461 (distd)
12 *Chan Wai Tong* v *Li Ping Sum* [1985] 2 WLR 396; [1985] AC 446 (refd)
13 *Paul* v *Rendell* (1981) 55 ALJR 371 (refd)
14 *Croke* v *Wiseman* [1982] 1 WLR 71; [1981] 3 All ER 852 (folld)
15 *British Transport Commission* v *Gourley* [1956] AC 185; [1955] 3 All ER 796 (refd)
16 *Jones* v *Jerman* (unreported) Kemp & Kemp (special edition): *Quantum of Damages* Vol 1 para 6-008/8/5 (folld)
17 *Chan Heng Wah & Anor* v *Peh Thiam Choh & Anor* [1988] 1 MLJ 74 (refd)

Abdul Rashid bin Abdul Gani for the plaintiffs.
Lawrence Chua for the defendant.

Cur Adv Vult

Chao Hick Tin J: On 20 February 1988, the first plaintiff (an infant) was travelling as a passenger in motor taxi No SHA 3558M driven by the defendant along the central carriageway of Nicoll Highway in the direction of Guillemard Road, when the said motor taxi went over the road divider onto the wrong side of the said highway and collided with an on-coming motor taxi No SH 7799R. The second plaintiff is the father of the first plaintiff.

The defendant conceded liability and an interlocutory judgment was entered against him, with damages to be assessed. Following a hearing on damages before a senior assistant registrar, it was ordered that:

(i) the defendant should pay to the first plaintiff a total sum of $691,699.85 as damages, together with interest accruing on $181,163.85 at the rate of 6% pa from the date of the writ, namely, 21 July 1988, up to the date of the order; and
(ii) the defendant should pay the second plaintiff a sum of $3,375 together with interest thereon at 6% pa from 21 July 1988 to the date of the order of court.

The sum of $691,699.85 awarded to the first plaintiff was made up as follows:

Pain and suffering and loss of amenities	—	$150,000
Loss of future earnings	—	$325,536
Future cost for a maid	—	$180,000
Special damages	—	$ 31,163.85
Future medication	—	$ 5,000

This is an appeal by the defendant against the assessment of the senior assistant registrar only as regards the first three items, ie pain and suffering, loss of future earnings and future cost of a maid. The first plaintiff was 14 years old on the date of the accident and was 16 on the date of the assessment. She was born on 5 October 1973.

I will first set out the medical evidence. After the accident, the first plaintiff was brought to the Singapore General Hospital in an unconscious state. While the doctor who examined her on admission found no external injuries over the scalp, she diagnosed her to have a head injury. The first plaintiff was transferred to the Tan Tock Seng Hospital ('TTSH') for further treatment.

At TTSH, she was found to have:

> no spontaneous respiration, pulse rate was 79min, blood pressure was 126/56mmHg, cardiovascular system was normal, chest compression was negative. She was in coma 3, responded to pain; pupils were 7mm on the right side and 2mm on the left, both not reactive to light. Dolls eye sign present only on the right side. All jerks were present, plantar reflexes were both upgoing. There was a 3cm laceration over the medial aspect of the left ankle exposing the tendons.

There was, however, no fracture. A CT scan of the head showed some blood in the right ventricle but there was no haematoma. The first plaintiff was in coma for about 20 days. She clearly had a bad head injury which left her with a paresis of the left third and seventh (upper motor) nerves and a clumsy left hand. She also had problems of expressive aphasia and dyslexia, due to brain damage on the right side. Expressive aphasia means difficulty in expressing oneself. Dyslexia indicates reading disability. She was discharged from TTSH on 20 May 1988.

Dr Peh Lai Huat, the registrar at the Department of Psychological Medicine of the TTSH, stated in his report dated 7 December 1989 that the first plaintiff had an IQ level of 70 which was at the borderline of mental retardation. Her verbal IQ score was 79 and performance IQ score was 62. There was impairment in her recent memory and delayed recall. A CT scan of her brain done on 24 November 1989 showed marked cerebral atrophy, ie shrinking of the brain. She talked in a childish manner and showed poor concentration and was disorientated in time. There was also a personality change in the first plaintiff. She was no longer the obedient child she was before the accident. It was reported that she would refuse to take instructions from her parents, lose her temper and shout back at them. She also had other behavioural problems like locking herself in her room, cutting up her dresses and listening to radio with a high volume without consideration for others. In Dr Peh's opinion the general lowering of her intellectual functioning, memory deficits and her change

in personality were the result of the severe head injury sustained during the accident in February 1988. Dr Peh also told the court that in view of the fact that two years had passed since the accident, it was unlikely that her condition would improve. The brain has no regenerative power.

Dr Robert Don ('PW2'), a specialist in rehabilitation medicine, examined the first plaintiff on 30 October 1989 for half an hour. He noted that she was very vocal and appeared orientated as to time. He, however, observed that her behaviour was inappropriate and she laughed without reason. He also found neurological evidence of 'left III and VII (UMN) cranial nerve lesions with diplopia', which meant she had double vision. Her face and mouth were slanted. In his opinion her behaviour would be unpredictable. She could be dangerous to herself as she had come to realize that she was 'cosmetically impaired'. He felt that she would need a principal care giver like a maid. However, Dr Don agreed that the first plaintiff could feed and dress herself. A person was required just in case she got into one of her moods. When asked if the first plaintiff would be able to take care of herself after she had undergone rehabilitation, he said this question should be put to a psychiatrist.

Dr Aw Soh Choo, a consultant psychiatrist with the Child Psychiatric Clinic of the Ministry of Health, examined the first plaintiff on four occasions in November/December 1989. She had also spoken to Dr Peh. In her report dated 23 December 1989 Dr Aw stated, inter alia, the following:

> On examination, Diana is a tall, plump-looking adolescent who had a squint over the left eye and an asymmetrical smile. Her mood varied from disinhibition to inappropriate, cheerfulness to misery. In her talk, she was preoccupied with two main themes: (1) her physical appearance and bodily changes due to the accident; (2) her feelings of monotony in her present life as she is now unable to attend normal school. There was no evidence of psychosis. Cognitive assessment revealed intellectual impairment and deterioration including short-term memory.
>
> Physical examination
>
> This revealed the following findings: Her general condition was good. She had scars on the front of her neck due to tracheostomy and a scar on the left medial ankle. The cardio vascular and respiratory systems were normal. Her central nervous system was normal except for a III nerve palsy of her left eyelid muscles, and a VII cranial nerve palsy causing her to smile in a crooked manner.
>
> Diagnosis
>
> Diana has suffered a personality change following head injury. She also has intellectual and memory impairment. Some of her symptoms indicate adjustment reaction due to the sequelae of head injury. Adjustment has been made more difficult for Diana and her family, in particular her parents, as she is also at the stage of development in adolescence with needs of a good self-identity and of independence and freedom.

Dr Aw told the court that, due to her intellectual impairment, it was almost impossible for the first plaintiff to go to a normal school. In her assessment Dr Aw found that the first plaintiff's previous personality of being outgoing and wanting to have friends had not changed. She liked to look nice and to travel. Dr Aw said that the first plaintiff was still outgoing. Dr Aw also said these to the court:

> Her physical disabilities would affect her ...
>
> Her eyes looked terrible. Her smile is crooked and she had fat legs.
>
> Her emotional state is expected to present difficulty. However, it is amenable to treatment in the long term.
>
> She would definitely have to be seen by a child psychiatrist ...
>
> Other than the child psychiatrist, I would include school or vocation centre or a person who could teach her simple skills in order for her to learn simple trade in the future.
>
> I am aware that lately she had become violent and beat up her parents. I conclude she has a low threshold to frustrations after the head injury. She reacts easily and irritably to frustration.

Dr Aw also said that the symptoms displayed by the first plaintiff could either taper off or she could adjust to her condition after she has passed the adolescent stage. She agreed that some of the symptoms displayed are those displayed by uninjured adolescents. With motivation and proper help, things could improve. However, she added that since it would be difficult to correct her physical appearance, that would be a great hindrance to the first plaintiff's development.

According to Dr ES Tan, Head of the Department of Rehabilitation Medicine, TTSH, the first plaintiff could do simple tasks like pressing lift buttons. But she would not be able to undertake tasks that needed dexterity. Physically she had fully recovered. She had also recovered from aphasia and dyslexia though her speech was slightly slurred. In Dr Tan's opinion there was no likelihood of any shortening of her life expectancy.

The mother of the first plaintiff told the court that when the first plaintiff was in hospital, she had, on the recommendation of the ward doctor, hired a night nurse to look after the first plaintiff. After her discharge from hospital, a maid was engaged to take care of the first plaintiff as she was then unable to walk properly. The mother said the first plaintiff was aggressive towards the maid so much so that the maid refused to work for them anymore. The first plaintiff even assaulted her parents. The mother said that the first plaintiff was never left alone at home. She could not take care of herself.

From the medical evidence, it is clear that physically there was minimal impairment.

The principle on which an appellate court acts in reviewing an assessment of damages by a lower court

was enunciated by MacKinnon LJ in *Greenfield* v *London and North Eastern Railway Co*[1] as follows:

> The principle on which the Court of Appeal reviews the assessment of damages, whether too high or too low, is not because the Court of Appeal might have given rather more or rather less, but only (1) if the judge has omitted some relevant consideration or admitted some irrelevant consideration, or (2) if the amount is so excessive, or insufficient, as to be plainly unreasonable.

In a later case, *Nance* v *British Columbia Electric Railway Co Ltd*,[2] Viscount Simon LC declared very much the same principle when he stated that a judge's decision on quantum of damages should not be disturbed unless (i) the judge has applied a wrong principle of law or (ii) the amount awarded is either so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.

Pain and suffering and loss of amenities

Under this item, the defendant submitted that the sum awarded of $150,000 is way out of line with previous awards in Singapore and Malaysia for similar kind of injuries. In support of that submission, the following precedents, among others, were cited:

(a) *Tan Joon Heng* v *Thiam Boon Kiap & Anor*[3] decided by Thean J on 1 September 1987. Plaintiff, aged 19, had right hemiplegia and head injury. Pain and suffering and loss of amenities assessed at $100,000. Loss of future earnings was fixed at $126,000 ($700 per month over 15 years) and the cost of domestic help assessed at $36,000. More will be said about this case later as the first plaintiff has also relied on it.

(b) *Lai Chi Kay & Ors* v *Lee Kuo Shin*[4] decided by Chua J on 27 February 1981. Plaintiff was a 28-year-old medical student. Coma for a few months and hospitalized for nine and a half months. Gross swelling of the brain. Walked spastic. Speech slurred. Poor memory and loss of intellectual ability. Could not even be a junior clerk or typist. General damages $55,000.

(c) *Teo Tio Khiang & Anor* v *Ooi Eng Teong*[5] decided by Lai Kew Chai J on 31 July 1986. Plaintiff, aged 21, was a production operator. Severe brain injury. IQ 50-70 like a retarded child. Gross intellectual deterioration and personality changes. Fractured clavicle. Did not require constant supervision but could not be left for extended period. Would not be employable. General damages $70,000. Loss of future earnings, $57,600 ($300 per month over 16 years). Cost of domestic help $18,528 ($200 per month over ten years, on an annuity basis).

(d) *Tominam bte Tukimin* v *Toh Kai Chup*[6] decided by Chua J on 9 April 1988. Plaintiff, aged 25, was a factory operator. Brain injury, giddiness, impaired memory, weak left leg. Epileptic fits. General damages assessed at $45,000. Though neurosurgeon stated that she could not be left entirely on her own for any length of time, no amount was given for domestic help.

(e) *Lai Wee Lian* v *SBS (1978) Ltd*[7] decided by the Privy Council on 10 April 1984. Plaintiff aged 23. Brain injury. Memory impaired. Neurogenic bladder. Difficulty in right upper limb. Difficulty in ambulation. Dependant on mother for toilet matters. Looked as if of unsound mind. Required constant supervision for day to day living. Unable to have sexual intercourse. Lost prospect of a happy marriage. Pain and suffering and loss of amenities $85,000. Loss of future earnings $100,000 ($600 per month over 15 years).

(f) *Jamil bin Harun* v *Yang Kamsiah & Anor*[8] decided by the Privy Council on 13 February 1984. Plaintiff aged seven. Brain injury. Mentally retarded. Could not control bladder and bowels. Would have to be cared for all her life. Could not learn self-supporting trade. Pain and suffering and loss of amenities $70,000. Loss of future earnings $33,816. Cost of future care $25,362.

(g) *Chiang Chang Sein & Anor* v *Estate of Leow Poh Hua*[9] decided by Sinnathuray J on 29 August 1988. Plaintiff aged 15 at the date of accident. Salesman at time of assessment. Severe head injury. Fractured femur. 2cm shortening. Very poor memory. Short temper. Permanent mental disability. Spastic left limbs. Unable to find way home from work. Changed jobs four times in six months. EEG test showed bilateral abnormalities, the right being worse than the left. For head and brain injuries $60,000. Fractured left femur with shortening $11,000, loss of future earnings $135,000 ($750 per month over 15 years).

(h) *Chan Kam Lan* v *Ong Lean Kee*[10] decided by Wee Chong Jin CJ on 6 September 1978. Plaintiff 19-year-old factory worker. Brain injury. Fractured tibia. Dementia personality changed. Could not live independently. For pain and suffering and loss of amenities: $50,000.

Counsel for the plaintiffs relied in particular on the case of *Tan Joon Heng* v *Thiam Boon Kiap & Anor*.[3] I think it is important that I recite the injuries suffered by the plaintiff, aged 19, as set out in para 209 of Butterworths Law Digest of February 1989:

(a) Serious head injury with fractured left parietal and temporal bones extending into the left middle cranial fossa;

(b) Massive scalp and facial haematoma with right hemiplegia;

(c) Plaintiff developed fits and therefore required treatment with anti-convulsant medication ... Anti-convulsant therapy is necessary for the rest of his life.

(d) Plaintiff also developed hydrocephalus (ie obstruction of the circulation of brain water causing a distension of brain cavities and high intra-cranial pressure) which had to be relieved using a ventriculoperitoneal shunt (ie a tube with a valve that was inserted into the abdomen while the other end was inserted into the brain cavity) to relieve fluid build-up. The shunt might be blocked from time to time, in which case the blocked shunt would have to be removed and replaced by another one. Each successive shunt operation would become less successful and more dangerous and difficult because of possible infection. Shunt treatment was necessary for the rest of his life.

The plaintiff's concentration and intelligence was affected. He was not able to cope even with simple jobs. His life expectancy was unpredictable as the shunt might be blocked at either end at any time. The plaintiff was awarded, inter alia, $100,000 for pain and suffering and loss of amenities, $126,000 ($700 per month for 15 years) for loss of future earnings and $36,000 for future domestic help.

In my opinion the injuries and the residual disabilities suffered by the plaintiff in *Tan Joon Heng* v *Thiam Boon Kiap & Anor*[3] were certainly much more severe than the first plaintiff in the present case. There is really no comparison between the two. The residual disabilities of the first plaintiff here are these: intellectual impairment (at the borderline of mental retardation); personality change with a tendency to be aggressive; eyes and mouth were crooked; double vision; and left hand is somewhat weak. Her speech is alright now except for a slight slurring. Considering the precedents referred to above, in my judgment, the appropriate compensation payable to the first plaintiff for the head injury and the consequential disabilities that resulted therefrom, and taking into account inflation, should not exceed $70,000. The double vision and the hemiparesis are all direct consequences of the head injury and no separate sum should be awarded for them as I have included them in the assessment of $70,000. However, as regards the facial disfigurement which is also a direct consequence of the head injury, I feel inclined to add another $10,000 for that. The reason is that I think for a young lady, such a disfigurement will cause her more pain than to a young man. As regards the 3cm laceration over the left ankle exposing the tendons, that seems to me to be something quite minor and in respect of which a sum of $2,000 should be adequate. The award of $150,000 made by the senior assistant registrar seems to me grossly excessive. I accordingly revise it to $82,000.

It would appear that the learned senior assistant registrar had accepted the rather ingenuous argument of counsel for the plaintiffs that the conventional sum for head injuries awarded in past cases were inadequate and should be upped from the range of $60,000 to $70,000 to $120,000. The theory advanced was that since in respect of the most severe injury, a quadriplegia, where the amount awarded used to be $110,000 to $120,000, a Singapore court had been persuaded in *Mohamed Fami Hassan* v *Swissco Pte Ltd & Anor*[11] to increase it to $180,000, the same should be done for head injuries. Counsel for the plaintiffs said that in England awards for head injuries are about two-thirds of those for quadriplegia and since *Mohamed Fami Hassan*[11] held that for quadriplegia the award was $180,000, therefore, the appropriate award for head injuries should be $120,000.

I would like to make these observations on this particular argument. First, it would appear that while the judgment was reserved by the Court of Appeal in *Mohamed Fami Hassan,*[11] the plaintiff died and the award was reduced to $100,000. It is not clear why the reduction was made and I have been informed that there are no written grounds. Secondly, as a general rule, in awarding damages the court should have regard to awards in the same jurisdiction or in a neighbouring country where the conditions are similar: see opinion of Privy Council in *Chan Wai Tong* v *Li Ping Sum*[12] at p 401. In any event, I am not persuaded that this court ought to accept such a kind of argument to warrant an abrupt increase of between 80% and 100% as suggested by the first plaintiff's counsel. This argument presupposes that assessment of damages is something capable of precise calculation by reference to mathematical formula. That was never the case and, in my view, should not be the case. No authority has laid down that the amount for head injuries should be two thirds of that for quadriplegia. I am not prepared to accept such a correlation. Even for very much the same kind of injuries, the amount awarded in each case will vary depending on the overall circumstances. What these previous cases will show is a range to guide the courts in the future. I would not be surprised if such a method of calculating damages could lead to some strange or undesirable results. I do not think I should use English awards as guides to assessing damages where there are adequate local cases in question. Neither do I think I should adopt any purported correlation between English awards on two types of injuries (even if such a correlation is justified). It should be obvious that the earning capacity of a person in the United Kingdom and the social conditions there are different from those in Singapore. So also is the inflation rate. In fact we pride ourselves as having kept our inflation rate low. Further, the value of the pound sterling has dropped significantly in the last 25 years. In

relation to the Singapore dollar, pound sterling has dropped something like 60% in value from what it was in 1965.

I agree that the court should, in assessing damages, take into account the change in the value of money in a broad sort of way. Counsel for the plaintiffs conceded that *Teo Tio Khiang*[5] is very close to our case. In my view, in terms of mental incapacity, the plaintiff in that case was worse than the first plaintiff in the present case. Therefore, I think a sum of $82,000 is fair and reasonable for the head injuries, the laceration and the residual disabilities which the first plaintiff now suffers.

Loss of future earnings

On this item the learned senior assistant registrar granted the amount claimed by the first plaintiff of $325,536. This was worked out on the basis that the average monthly earnings of a Singaporean in all industries were $1,361 (based on statistics published by the Labour Ministry for 1988) exclusive of bonus and employer's CPF contributions. The first plaintiff's counsel took $1,361 as the multiplicand and multiplied it by 13 months and added another 15% as the employer's CPF contributions, making a total annual wage of $20,346. A multiplier of 16 was then applied.

I appreciate that it is never an easy task to assess the loss of future earnings, particularly in a case where the plaintiff is still schooling and has not started work. As so aptly observed by the Privy Council in *Paul* v *Rendell*[13] at p 372, such an assessment 'involves a double exercise in the art of prophesying not only what the future holds for the injured plaintiff but also what the future would have held for him if he had not been injured'.

As I see it, the main difficulty with this calculation is the adoption of the sum of $1,361 as the multiplicand. It ignores the fact that, in general, female employees are paid less than male employees. It also fails to take into consideration variants in earnings which are dependent on age, experience, different occupational groups and supply and demand for that occupation. The statistics show that only 22% of female employees earned more than $1,000.

I note that the sum of $1,361 was also the mean monthly wage of stenographic secretaries. $1,250 was the median wage for stenographic secretaries. The first plaintiff was a student and was not working at the time of the accident. She was in Secondary III of the normal stream. Her results for Secondary I and Secondary II were average. Her position in class at the end of Secondary II was 25/36. If she had not met with the accident, she would have sat for her 'O' level examinations in November 1990, as a normal stream student would take five five years to do her 'O' level. She could presumably start working in early 1991, perhaps as a clerk. If she had wanted to be a typist or stenographer she would have to undergo further short courses to acquire those skills. If the first plaintiff had commenced working as a clerk or even a stenographer at the date of the accident, then what she earned would have been used as a basis to calculate her future loss. Therefore, I find great difficulty in accepting that in the case of a person who has never worked, the national average wage should be used for purposes of working out his loss of future earnings. I understand the English courts have used something like this in calculating the loss of future earnings in respect of fairly young children, eg *Croke* v *Wiseman*[14] where the child was seven years old at the date of trial. Even so, the wage adopted by the court in *Croke*[14] was not the national average wage but the national average wage *for a young man*. That I think is quite different. So what I should be doing is to find the national wage for a young woman to calculate the loss of the first plaintiff. Unfortunately, no such figure is available. But what the statistics for 1988 do show is that the mean starting wage of stenographic secretaries was $764 and that of a clerk $490. Taking a more favourable view of the matter, I think it would not be unlikely that if the first plaintiff had not been injured she could have become a stenographic secretary. The amount to be taken in computing loss of future earnings following *Croke*,[14] must be that of a young stenographic secretary and not someone who had worked for some years. Therefore, the multiplicand I will adopt is the sum $764 per month and I will round it upwards to $800.

The second area of difficulty is the extent to which the first plaintiff will not be able to work in the future. While Dr Don did in his report state that her disabilities were likely to be permanent and that she would require 'constant personal care and attention for the rest of her life', he did clarify on cross-examination that only a psychiatrist could answer if the first plaintiff would be able to take care of herself after she had undergone rehabilitation. But he also added that 'in a case of permanent severe mental or emotional damage rehabilitation will fail'. This last comment really begs the question.

In this regard I think the more pertinent evidence is that of Dr Aw, the child psychiatrist. I have already set out what she said. Dr Aw did not rule out the possibility that the first plaintiff could learn some simple skill or trade. To achieve that she needed motivation and help. Dr Aw also thought that after the first plaintiff had passed the adolescent stage, some of her emotional symptoms might go. It will be recalled that Dr ES Tan was also of the opinion that she could do simple tasks but not those that needed dexterity.

It was argued by the defendant's counsel that consideration should also be given to the fact that, if the first plaintiff had not been injured, she might marry,

have children and stop work like what happened to the first plaintiff's mother. While I would not say that that is not possible, ie she might stop work when she marries and has children, the conditions applicable in each generation are different. We cannot ignore the fact that the State is constantly urging our women folk to join the work force and contribute positively to the economic growth of the country. I am not inclined to make any reduction on this account.

Of course an appropriate deduction should be made for tax: see *British Transport Commission* v *Gourley*.[15] But compared with the position in the United Kingdom, the tax rates applicable in Singapore to a person earning the kind of income we are concerned with here are really quite low and would not be terribly significant. We are looking at an effective tax rate of 3% on a net sum after deducting for personal and other reliefs.

It seems to me that in considering loss of future income, the court must have regard to what both Dr Aw and Dr Tan had said. I don't think it would be unfair to say that after the first plaintiff has overcome her psychological problems, there is a fair chance that she could learn some skill or trade and find work which does not require too much mental faculties. Giving a grace period of five years, she should be able to earn say modestly $300 per month. As I have accepted the sum of $800 as the monthly loss, then after five years her monthly loss will be reduced to $500.

Accordingly, under this item I will follow the approach taken in *Jones* v *Jerman*[16] and award a sum of $134,550, made up as follows:

($800 × 13) + 15% of ($800 × 13)
= $11,960 × 5
= $59,800

($500 × 13) + 15% of ($500 × 13)
= $7,475 × 10
= $74,750

Total = $134,550 ($59,800 + $74,750)

It would be noted that in the above calculation I have selected a multiplier of 15. I have taken into account the fact that for the first plaintiff to be a stenographic secretary, she would have to undergo further courses of probably six months to a year. I also believe a multiplier of 15 or 16 is the norm in a case of this kind, eg *Lai Chi Kay*;[4] *Lai Wee Lian*;[7] *Teo Tio Khiang*;[5] *Chan Heng Wah & Anor* v *Peh Thiam Choh & Anor*.[17] For the reasons given above, I have in the calculation split up the multiplier into two periods. I have allowed for CPF benefits of 15%. The Singapore courts have long accepted the CPF contributions of the employer as a factor to be taken into account in determining such losses: see *Chan Heng Wah*;[17] *Tan Joon Heng*;[3] and *Teo Tio Khiang*.[5]

I do not think, in a case of this kind, it would be fair and reasonable just to award a global sum on the basis of loss of earning capacity. I believe the way I have worked out the sums is more likely to accurately reflect the loss of the first plaintiff than if I were to pluck a figure off the top of my head.

Future cost of a help

Under this item, the senior assistant registrar granted the sum claimed by the first plaintiff of $180,000. This was based on a monthly sum of $750 multiplied by 12 months and over a period of 20 years. This award seems to be given on the basis that the first plaintiff would be in need of a maid to take care of her for the rest of her life.

Having scrutinized the medical evidence which I have set out hereinbefore, I certainly do not get the impression that the first plaintiff needs full-time care. She can now literally take care of herself. Even Dr Don said that a help was required only just in case she gets into one of her moods. Dr Aw, who had examined the first plaintiff a lot more, seemed guardedly optimistic that when the first plaintiff passes the adolescent stage and comes to terms with her physical appearance, her condition could improve.

As I understand it, on the date of the hearing before the senior assistant registrar, the mother of the first plaintiff was taking care of her. The maid they engaged left because she could not tolerate the first plaintiff's behaviour. I think on the evidence it would be wrong to award the first plaintiff a sum as if she would forever be in need of a full-time maid. She does not need a full-time maid even now. In fact I feel that an arrangement whereby she is left in the company of or within sight of another person should do. It cannot be disputed that a full-time maid would cost approximately $600 to $750 per month, depending on the country of origin of the maid. Considering all the circumstances and viewing the matter sympathetically, I think a sum of $500 per month to obtain a local help just to keep an eye on her will be ample and that such help should continue for a period of five years. If I have erred here, I believe I have erred on the side of being generous to the first plaintiff. I think after five years, the first plaintiff will probably have reconciled herself with her own physical condition and start to live normally. Therefore, for this item, I would revise the figure to $30,000.

In the result, the appeal is allowed to the extent that the total judgment sum to be paid by the defendant to the first plaintiff is reduced to $282,713.85, made up as follows:

Pain and suffering and loss of amenities	— $ 82,000
Loss of future earnings	— $134,550

Future cost of domestic help	—	$ 30,000
Special damages (not under appeal)	—	$ 31,163.85
Future medication (not under appeal)	—	$ 5,000
		$282,713.85

I have looked again at the three items constituting general damages which add up to a total of $246,550. Considering the injuries and the residual disabilities which the first plaintiff now suffers, this figure is, I think, fair and reasonable. In my view, in the circumstances of this case, the sum awarded by the senior assistant registrar is astronomical.

Accordingly, I order the defendant to pay the first plaintiff a sum of $282,713.85 as damages, together with interest accruing on $113,163.85 ($82,000 + $31,163.85) at the rate of 6% pa from the date of the writ up to the date of this order and a further interest of 2% on $31,163.85 from 22 February 1990 to the date of this order. As regards the order made by the senior assistant registrar in favour of the second plaintiff, that shall remain.

As regards costs, I think it is only fair and proper that the taxed costs of the plaintiffs at the hearing below be abated by 40%. The defendant shall be entitled to the costs of this appeal which I fix at $18,000.

Appeal allowed in part.

Solicitors: *Khattar Wong & Partners; Lawrence Chua & Partners.*

Reported by *Kevin Mathews*

Anuar bin Othman v Public Prosecutor

HIGH COURT (SINGAPORE) — CRIMINAL MOTION NO 1 OF 1990
CHAN SEK KEONG J
3 DECEMBER 1990

Criminal Procedure — Appeal — Extension of time for filing notice of appeal — Test to be applied — Effect of acquittal of the co-accused — Merits of the case

Criminal Law — Corruption — Particulars of charge

The applicant was charged and tried jointly with a co-accused for two offences under the Prevention of Corruption Act (Cap 24, 1985 Ed). Both accused were hawker liaison officers with the Housing and Development Board ('HDB'). They were acquitted of one charge but convicted of receiving gratification as a reward for showing favour in their principal's affairs. Both accused filed notices of appeal against their convictions. The applicant filed his notice personally as he claimed he had exhausted all his funds contesting the trial and could not afford legal counsel. On 23 August 1988, he was served the notes of evidence and grounds of decision. However, he claimed he did not know how to prepare the petition of appeal and did not realize that it had to be filed within ten days. He thus did nothing further.

Sometime in 1989, the applicant learnt that the co-accused's appeal had been allowed and his conviction set aside. The applicant now wished to proceed with his appeal and applied for an extension of time to file his petition of appeal.

The DPP objected saying that the delay of more than 18 months is inordinate, and that the applicant must show that he has an arguable case. The court heard the full arguments as if it was hearing the appeal.

On convicting the accused, the district judge had opined that there was no evidence showing that the accused had shown favour to the assistant and instead the charge should have been 'as a reward for doing an act in relation to your principal's affairs'. The district judge said he did not amend the charge as it was sufficiently clear from the charge and the facts adduced in evidence what the prosecution's case was.

Held, allowing the application:

(1) The explanation for the delay in making the application is accepted.

(2) The proposition that the setting aside of the conviction of the co-accused does not in itself show merit is incorrect. It depends on the facts of each case.

(3) Having found that the prosecution had adduced no evidence to sustain the charge, the district judge should have acquitted the two accused as required by s 180(f) of the Criminal Procedure Code (Cap 68, 1985 Ed) ('CPC').

(4) It was erroneous to equate 'showing favour' with 'doing an act'. The most essential particular of the charge was the showing of favour by assisting the hawker assistant in getting approval.

(5) The applicant could not have known from the particulars of the charge and the evidence that he was being charged for helping the hawker assistant in filling up the application form, submitting it on the latter's behalf and subsequently obtaining a lunch from the latter.